

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401—*et seq.*

Subpart KK—Ohio

2. Section 52.1870 is amended by adding (c)(126) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(126) On March 1, 1996, and several subsequent dates, Ohio submitted revisions to its Permit to Install rules as

a revision to the State implementation plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code (OAC) Rule 3745-31-21, effective April 27, 1998; OAC Rules 3745-31-22 through 3745-31-27, effective April 12, 1996; OAC Rules 3745-47-01, 3745-47-2, and 3745-47-03, effective June 30, 1981; OAC Rule 3745-47-05, effective June 30, 1981; OAC Rule 3745-47-07, effective June 30, 1981; and OAC Rule 3745-47-08(D), effective August 10, 1999.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN148-1a; FRL-7436-2]

Redesignation and Approval and Promulgation of Indiana Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is redesignating Lake County, Indiana, to attainment for particulate matter with a nominal aerodynamic diameter of 10 microns or less (PM₁₀). EPA also approves Indiana's plan for continuing to attain the PM₁₀ standards. Indiana requested these actions on September 25, 2002. In taking this action, EPA concludes that this area is meeting the national standards for PM₁₀ and has acceptable plans for assuring continued attainment.

DATES: This rule is effective on March 11, 2003, unless the EPA receives relevant adverse written comments by February 10, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886-6067 before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6067.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

- I. Review of Redesignation Request
 - A. Background
 - B. Review Under Statutory Criteria
 - 1. Has the Area Attained the Standards?
 - 2. Has EPA Fully Approved the Applicable Implementation Plan?
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 - 4. Does the Maintenance Plan Assure Continued Attainment?
 - 5. Has the State Met the Requirements of Section 110 and Part D?
- II. Rulemaking Action
- III. Administrative Requirements

I. Review of Redesignation Request

A. Background

On November 6, 1991, EPA published a nonattainment designation for northern Lake County for the PM₁₀ standards as given in Title 40 of the Code of Federal Regulations § 50.6 (40 CFR 50.6).¹ (See designations in 40 CFR 81.315.) These standards include a standard for annual average concentrations and a standard for 24-hour average concentrations. The area designated nonattainment included the cities of Gary, East Chicago, Hammond, and Whiting. On September 25, 2002, Indiana requested that the PM₁₀ designation in 40 CFR 81.315 for this area in Lake County be changed from nonattainment to attainment. Included with this request were a summary of relevant air quality data, evidence of the opportunity for public review of this request (including a public hearing held July 18, 2002), and a discussion of how the various criteria for redesignation have been met.

Statutory criteria for redesignations from nonattainment to attainment are given in section 107(d)(3)(E) of the Clean Air Act. EPA may not promulgate such a redesignation unless: (i) The area has attained the applicable air quality standards, (ii) the area has a fully approved State Implementation Plan (SIP) under section 110(k) of the Act,

¹ EPA also set revised standards for PM₁₀ as well as new standards for particles nominally 2.5 microns and smaller (PM_{2.5}), promulgated on July 18, 1997, and codified at 40 CFR 50.7. However, the Circuit Court of Appeals for the District of Columbia vacated the revised PM₁₀ standards (*American Trucking Assoc. v. EPA*, 175 F.3d 1027). EPA has not promulgated designations for the revised PM₁₀ standards. Today's action addresses the 1987 PM₁₀ standards in 40 CFR 50.6, for which designations remain in effect in 40 CFR part 81.

(iii) EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions, (iv) EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act, and (v) the state has met all requirements applicable to the area under section 110 and part D of the Act.

EPA has issued a variety of relevant guidance memoranda interpreting the statutory criteria for redesignations and maintenance plans, most notably including a memorandum dated September 4, 1992, signed by the Director of EPA's Office of Air Quality Planning and Standards. In addition, regulations governing the evaluation of PM₁₀ monitoring data are in appendix K to 40 CFR part 50.

B. Review Under Statutory Criteria

1. Has the Area Attained the Standards?

Title 40 CFR part 50, appendix K provides for evaluating three years of representative monitoring data. Indiana monitors PM₁₀ concentrations at numerous locations in Lake County. Detailed results of this monitoring are available in EPA's Air Quality System (AQS) and on the Internet at <http://www.epa.gov/air/data/>. Indiana's submittal summarizes these air quality data.

For the most recent three calendar years, *i.e.*, 1999 to 2001, Indiana collected PM₁₀ air quality data at five monitoring locations, including locations in Gary, Hammond, and East Chicago, where emissions are highest and the highest concentrations are expected. All sites recorded annual average concentrations below the annual average standard in all three years. Four of the five sites also recorded no exceedances of the 24-hour standard and thus clearly meet this standard. However, the fifth site, located in Gary at 201 Mississippi Street near the USX steel mill, recorded three exceedances in the 1999 to 2001 period. Thus, further analysis is necessary to determine whether this site meets the 24-hour standard.

The procedures in appendix K to 40 CFR part 50 for assessing compliance with the 24-hour standard estimate the number of days per year that the site is expected to exceed the level of the standard (150 micrograms per cubic meter). If a monitoring site collects complete information, the number of expected exceedances is simply equal to the number of measured exceedances. However, if data from a monitor are missing or inadequate for one or more days, these procedures provide for the

assessment of the additional number (potentially fractional) of additional exceedances estimated to have occurred on unmonitored or inadequately monitored days. The number of expected exceedances is then the sum of the number of measured exceedances plus the additional inferred number of exceedances expected for unmonitored or inadequately monitored days. The number of expected exceedances is thus the likely total number of exceedances that a monitor would have recorded had it obtained complete data.

Since PM₁₀ concentrations often vary by season, appendix K provides for estimation of expected exceedances separately for each quarter year. A location is attaining the standard if the monitor has a three-year average number of expected exceedances (rounded to the nearest tenth) of 1.0 or less.

The above Gary monitor recorded two exceedances in 1999, no exceedances in 2000, and one exceedance in 2001. The exceedances in 1999 both occurred in the last quarter. The monitor at this site is a continuous instrument that records hourly average values. The data obtained were adequate (at least 18 hours per day) to be considered complete for every day during the quarter. Therefore, the number of expected exceedances for 1999 at this site is equal to the 2.0 measured exceedances. The year 2000 had 0.0 expected exceedances. For 2001, the monitor recorded one exceedance in the first quarter out of 87 days with adequate data; three days in the first quarter had either no data or insufficient data. This leads to an estimated exceedances of 1.03, which rounds to a 2001 expected exceedances value of 1.0. Average expected exceedances for 1999 to 2001 then is 1.0. Consequently, this site is attaining the standard. More generally, since the monitoring includes representation of the worst-case locations in Lake County, EPA concludes that all of Lake County is attaining the PM₁₀ standards.

2. Has EPA Fully Approved the Applicable Implementation Plan?

The principal relevant element of the SIP required under Part D of Title I of the Clean Air Act for Lake County is a plan for attaining the particulate matter standards. Indiana submitted this attainment plan on June 16, 1993, with subsequent supplemental submittals. EPA approved this attainment plan on June 15, 1995, at 60 FR 31412. Indiana submitted separate rules addressing requirements for nonattainment area new source review; EPA approved these rules as satisfying applicable

requirements on October 7, 1994, at 59 FR 51108. While Clean Air Act section 172(c)(9) identifies a requirement for contingency plans, EPA has concluded that areas that are attaining the standards need not submit such contingency plans. (See 57 FR 13564, published April 16, 1992.) This reflects EPA's view that contingency plans under section 172(c)(9) are designed to address the possibility of an area failing to achieve the expected air quality improvement, that the need for such plans no longer exists after an area attains the standard, and that an area that has attained the standard and has a maintenance plan can rely on the contingency plans in the maintenance plan to address any recurrence of violations. Thus, EPA concludes that it has approved all required SIP elements for the Lake County particulate matter nonattainment area.

3. Is Attainment Due to Permanent and Enforceable Emission Reductions?

Indiana's SIP requires permanent emission reductions at a wide range of facilities including those facilities that Indiana's modeling has demonstrated to be the key contributors to prior air quality problems. The emission reductions result from installation of air pollution control equipment to capture and control particulate matter that was previously emitted. The reductions also result from ongoing measures to reduce emissions from plant roadways and storage piles. Enforceable emission limits adopted in Title 326 Indiana Administrative Code Article 6 and approved by EPA (as compiled at <http://www.epa.gov/region5/air/sips/sips.htm>) assure the permanence of these emission reductions. EPA thus concludes that permanent and enforceable emission reductions have enabled this county to attain the standards.

4. Does the Maintenance Plan Assure Continued Attainment?

Under section 175A of the Clean Air Act, maintenance plans must demonstrate continued attainment of the standards for 10 years after the redesignation. Thus, Indiana demonstrated maintenance through 2012. This demonstration focused on industrial sources, especially steel mills, which were the predominant cause of prior nonattainment in Lake County. Indiana compiled estimates of industrial source emissions for 1999 and anticipated emissions for 2012, projecting a 21 percent decline in emissions during that period. This indicates, in turn, that the area can be

expected to continue to attain the standards over the next 10 years.

In addition, the attainment plan that EPA approved in 1995 constitutes further evidence that Lake County can be expected to maintain the standards. This plan reflected maximum allowable emissions. By relying on an inventory of maximum allowable emissions from the most significant sources of particulate matter emissions in the area, the attainment plan demonstrated that the area would achieve and maintain attainment even if the sources operated at maximum capacity. This suggests that Lake County can be expected to maintain the standards permanently unless background impacts, particularly from area sources such as home heating and motor vehicles, increase significantly. Trends in home heating emissions can be deduced from trends in population, which in Lake County has essentially remained unchanged in the last five years and can be expected to remain essentially unchanged in the next 10 years as well. Motor vehicle emissions can be expected to decline, particularly as a result of new regulations reducing sulfur content of motor fuels and requiring lower emissions from both gasoline and diesel vehicles. Background concentrations of PM₁₀ transported into the area can also be expected to decline as a result of sulfur dioxide emission reductions from the acid rain program. These factors suggest that Lake County can be expected to maintain the standards through 2012 and beyond.

Maintenance plans must include contingency measures in case violations of the air quality standards unexpectedly arise. Indiana has adopted a rule for contingency planning in 326 Indiana Administrative Code 6-1-11.2, which EPA approved on October 11, 2002, at 67 FR 63268. This rule provides two levels of response, depending on the severity of the air quality problem. A "Level II" response occurs when a year's second high concentration in the area exceeds 140 micrograms per cubic meter. In this case, the State would assess what controls need to be implemented to avoid violations of the standard. A "Level I" response occurs when a violation occurs (excluding circumstances where the violation is attributable to an exceptional event, malfunction, or noncompliance). In this case, the State assesses the origins of the violation and adopts any necessary control measures within 18 months. EPA believes that these provisions satisfy the requirements for contingency measures as part of Indiana's maintenance plan for particulate matter for Lake County.

Maintenance plans must also include commitments to continued air quality monitoring and to submittal of a reassessment of maintenance in 8 years. Indiana commits in its submittal to continue monitoring PM₁₀ concentrations in accordance with its current monitoring plan. The core elements of Indiana's maintenance plan are permanent and will likely assure permanent maintenance, but the State nevertheless explicitly committed to submit the necessary additional maintenance plan in 8 years.

EPA's guidance memorandum of September 4, 1992, identifies various additional recommended features of maintenance plans. Many of these recommended features are not germane to pollutants like PM₁₀ in areas like Lake County that have plans showing attainment even with key sources emitting their maximum allowable emissions. Indiana nevertheless included these features in its maintenance plan.

EPA's guidance states that "The State should develop an attainment emission inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS." (Section 5a) Attainment for PM₁₀ in Lake County is assured not by limiting total emissions for the area to one specific level, but rather by defining allowable emissions for each location in the area and assuring that emissions for each location are at or below the allowable levels. Thus, the best "attainment emission inventory" for Lake County is the inventory of allowable emissions that Indiana used in its modeled attainment demonstration. Nevertheless, Indiana also provided estimates of more recent actual emissions.

Indiana has complied with the "Maintenance Demonstration and Monitoring Network" requirements of EPA's guidance of September 4, 1992 (sections 5b and c), as addressed above. Indiana satisfied the "Verification of Continued Attainment" requirement (section 5d) by periodically examining the air quality data that it will continue to collect. Finally, Indiana has satisfied the "Contingency Plan" requirements (section 5e), as addressed above. Thus, Indiana has satisfied all requirements for this maintenance plan.

5. Has the State Met the Requirements of Section 110 and Part D?

As noted in the rulemaking on Indiana's particulate matter plan cited above, published on June 15, 1995, at 60 FR 31412, Indiana has met the requirements of section 110 and Part D with respect to particulate matter planning in Lake County. That

rulemaking focused on Indiana's plan for attaining the particulate matter standards in Lake County, which is the most significant relevant requirement under section 110 and Part D. That rulemaking also addressed related requirements for reasonably available control measures and for reasonable further progress. Indiana was not required to address transportation conformity for particulate matter because transportation sources are not significant contributors to PM₁₀ concentrations in Lake County.

II. Rulemaking Action

EPA is redesignating Lake County, Indiana, to attainment for PM₁₀. In addition, EPA is approving Indiana's maintenance plan for this area.

Clean Air Act section 107(d)(3)(E) identifies five prerequisites for redesignation of areas from nonattainment to attainment. EPA concludes that these criteria are met with respect to PM₁₀ in Lake County.

EPA is publishing these actions without a prior proposal because we view these as noncontroversial actions and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the redesignation and maintenance plan if adverse comments are filed. This rule will be effective on March 11, 2003 without further notice unless we receive relevant adverse written comment by February 10, 2003. If the EPA receives adverse comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely changes the attainment status of a portion of a county and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state request to change the attainment status of an area, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

Indiana's request for redesignation did not include any additional limitations on sources, and thus provided no opportunity to use voluntary consensus standards (VCS). Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does

not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 11, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 23, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.776 is amended by removing and reserving paragraph (j) and adding paragraph (r) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(j) [Reserved]

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(r) Approval—EPA is approving the PM₁₀ maintenance plan for Lake County that Indiana submitted on September 25, 2002.

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PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 81.315 is amended by revising the particulate matter table entry to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Lake County: Cities of East Chicago, Hammond, Whiting, and Gary	03/11/03	Attainment.		
Vermillion County: Part of Clinton Township, Unclassifiable including sections 15, 16, 21, 22, 27, 28, 33, and 34.	10/27/97	Attainment.		
Rest of State	11/15/90	Unclassifiable.		